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ATTORNEYS FOR PETITIONER HILDA SOLIS,
DEPARTMENT OF LABOR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HILDA L. SOLIS, Secretary of Labor, United
States Department of Labor,

Petitioner,

v.

OPT, INC., a corporation; JOYCE
OLSZEWSKI, THE EXECUTOR OF THE
ESTATE OF ANTHONY OLSZEWSKI, a
deceased individual; JOYCELYN TRAN, an
individual; JONATHAN JONES, an
individual; and the OPT, INC. 401(k) PROFIT
SHARING PLAN, an employee pension
benefit plan;

Defendants.

CASE NO. 10-CV-04363 JW

STIPULATION BY PETITIONER HILDA L.
SOLIS AND DEFENDANTS OPT, INC. AND
JOYCE OLSZEWSKI TO APPOINT
INDEPENDENT FIDUCIARY AND
~~PROPOSED~~ ORDER

SUMMARY OF FACTS

1. On September 28, 2010, the Secretary filed her Complaint for violations of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001-1191c, in this Court, against Defendants Opt, Inc., a California corporation and Joyce Olszewski, as Executor of the Estate Of Anthony Olszewski, a deceased individual and Joycelyn Tran, an individual; Jonathan Jones, an individual; and the OPT, Inc. 401(k) Profit Sharing Plan, (hereinafter collectively referred to as "Defendants"). (See Doc. 1 (Complaint).)

2. A default Judgment was taken against Joycelyn Tran and Jonathan Jones on May 2, 2011 (See Doc.40 (Default Judgment).)

3. A Consent Judgment was entered into as to Defendants Opt, Inc. and Joyce Olszewski, the Executor of the Estate of Anthony Olszewski on May 14, 2012 (See Doc. 54 (Consent Judgment).)

4. The Consent Judgment specifically provides for the appointment of an Independent Fiduciary, who shall have full discretionary authority over the administration and management of the Plan. (Doc. 54, ¶6(a-i).) Among other things, the Consent Judgment provides that:

a. said Independent Fiduciary shall be responsible for collecting, marshalling, paying out, and administering all of the Plan's assets and taking further action with respect to the Plan as appropriate, establishing a trust account to receive those funds, and terminating the Plan when all of its assets are distributed to all eligible participants and beneficiaries (Id. ¶ 6(a)&(b));

b. said Independent Fiduciary shall have his or her reasonable costs and fees paid by Defendant Joyce Olszewski, as Executor of the Estate of Anthony Olszewski. Should there be insufficient funds in the Estate of Estate of Anthony Olszewski to pay the costs of the Independent Fiduciary, in accordance with the governing Plan documents, the Plan shall bear such costs, to be reimbursed to the Plan by all Defendants upon motion by the Secretary of Labor setting forth the sum of such costs for this Court to enter judgment against all Defendants for same. (Id. ¶ 6(i));

c. OPT, Inc., shall be removed as fiduciary and trustee to the Plan (Id. ¶ 3).

5. Petitioner and Counsel for OPT, Inc. and Joyce Olszewski, the Executor of the Estate of Anthony Olszewski have met and conferred about an appropriate fiduciary and matter and the Secretary has no objection to the appointment of M. Larry Lefoldt, CPA. Attached as **Exhibit A** is a copy of Mr. Lefoldt's Curriculum Vitae and Retirement Plan Experience. M. Larry Lefoldt, CPA has agreed to act as the fiduciary.

WHEREFORE, IT IS HEREBY STIPULATED THAT:

1. OPT, Inc. and Joyce Olszewski, the Executor of the Estate of Anthony Olszewski shall removed as fiduciary and trustee to the Plan;

2. M. Larry Lefoldt, CPA of Lefoldt & Co., P.A., 690 Towne Center Blvd., P.O. Box 2848, Ridgeland, MS 39158-2848, (601) 956-2374, shall be appointed as the Independent Fiduciary, who:

a. Shall be responsible for collecting, marshalling, paying out, and administering all of the Plan's assets and taking further action with respect to the Plan as appropriate, establishing a trust account to receive those funds, and terminating the Plan when all of its assets are distributed to all eligible participants and;

b. Pursuant to the procedures outlined in the Employee Benefits Security Administration's Field Assistance Bulletin 2004-02, shall exercise reasonable care and diligence to identify and locate each Plan participant and beneficiary who is eligible to receive a distribution under the terms of the Plan to the extent the Plan has distributable assets;

c. Has all the rights, duties, discretion and responsibilities of a trustee, fiduciary and Plan Administrator under ERISA, including filing a final Form 5500;

d. Has the authority to delegate or assign fiduciary duties as appropriate and allowed under the law and may retain assistance as he may require including attorneys, accountants, actuaries and other service providers;

e. Shall have full access to all data, information and calculations in the Plan's possession and under its control, including information and records maintained by the Plan's custodial trustee or service provider;

f. Shall have the authority to give instructions respecting the disposition of assets of the Plan, including the authority to amend the Plan document, as necessary;

g. Shall be authorized to receive up to \$3,721.15 in reasonable costs and fees paid by Defendant Joyce Olszewski, as Executor of the Estate of Anthony Olszewski. Should there be insufficient funds in the Estate of Estate of Anthony Olszewski to pay the costs of the Independent Fiduciary, in accordance with the governing Plan documents, the Plan shall bear such costs, to be reimbursed to the Plan by all Defendants upon motion by the Secretary of Labor setting forth the sum of such costs for this Court to enter judgment against all Defendants for same.

h. Shall comply with all applicable rules and law.

DATED: MARCH ___, 2013

BERLINER COHEN

BY: //SUSAN E. BISHOP//

SUSAN E. BISHOP
ATTORNEYS FOR DEFENDANTS OPT, INC. AND
JOYCE OLSZEWSKI, AS EXECUTOR OF THE
ESTATE OF ANTHONY OLSZEWSKI

DATED: MARCH ___, 2013

U.S. DEPARTMENT OF LABOR

BY: //JOSEPH MICHAEL LAKE//

JOSEPH MICHAEL LAKE
ATTORNEYS FOR PETITIONER HILDA SOLIS,
UNITED STATES DEPARTMENT OF LABOR

IT IS SO ORDERED.

DATED: ~~MARCH~~ ___, 2013

April 7, 2013

UNITED STATES DISTRICT COURT

BY: 

JUDGE LUCY KOH